

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

IN RE PHARMACEUTICAL INDUSTRY
AVERAGE WHOLESALE PRICE LITIGATION

THIS DOCUMENT RELATES TO:

The City of New York v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 04-CV-06054

County of Albany v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0425

County of Allegany v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-0236

County of Broome v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0456

County of Cattaraugus v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-0256

County of Cayuga v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0423

County of Chautauqua v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-0214

County of Chemung v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6744

County of Chenango v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0354

County of Columbia v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0867

County of Cortland v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0881

County of Dutchess v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 05-CV-6458

County of Essex v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0878

County of Fulton v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0519

MDL NO. 1456
Civil Action No. 01-12257-PBS

Judge Patti B. Saris

**PLAINTIFFS' OPPOSITION TO
ASTRAZENECA
DEFENDANTS' INDIVIDUAL
MEMORANDUM OF LAW IN
SUPPORT OF MOTION TO
DISMISS**

County of Genesee v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-00267

County of Greene v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0474

County of Herkimer v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00415

County of Jefferson v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0715

County of Lewis v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0839

County of Madison v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00714

County of Monroe v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6148

County of Nassau v. Abbott Laboratories, Inc., et al.
E.D.N.Y. Case No. 04-CV-05126

County of Niagara v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06296

County of Oneida v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0489

County of Onondaga v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0088

County of Ontario v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6373

County of Orleans v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6371

County of Putnam v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 05-CV-04740

County of Rensselaer v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-00422

County of Rockland v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 03-CV-7055

County of Schuyler v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6387

County of Seneca v. Abbott Laboratories, Inc., et al.

W.D.N.Y. Case No. 05-CV-6370

County of St. Lawrence v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0479

County of Saratoga v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0478

County of Steuben v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6223

County of Suffolk v. Abbott Laboratories, Inc., et al.
E.D.N.Y. Case No. 03-CV-12257

County of Tompkins v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0397

County of Ulster v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 06-CV-0123

County of Warren v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0468

County of Washington v. Abbott Laboratories, Inc., et al.
N.D.N.Y. Case No. 05-CV-0408

County of Wayne v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06138

County of Westchester v. Abbott Laboratories, Inc., et al.
S.D.N.Y. Case No. 03-CV-6178

County of Wyoming v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-6379

County of Yates v. Abbott Laboratories, Inc., et al.
W.D.N.Y. Case No. 05-CV-06172

INTRODUCTION

AstraZeneca Pharmaceuticals LP's and AstraZeneca LP's (collectively "AstraZeneca") individual memorandum seeks only the dismissal of claims against them relating to Zoladex. The grounds are that all such claims are barred by a 2003 settlement agreement with the State of New York ("2003 Settlement Agreement"). Plaintiffs concede that the Zoladex related claims seeking Medicaid reimbursement are barred to December 3, 2003. The claims arising from misconduct thereafter are not. Plaintiffs address all other causes against AstraZeneca in their brief opposing defendants' consolidated motion to dismiss the consolidated complaint of New York City and New York Counties other than Nassau (the "Consolidated Complaint" or "CC") and the second amended complaint of Nassau County (the "Nassau SAC" or "NSAC"). That brief is being filed contemporaneously.

DISCUSSION

The NY Counties seek to recover Medicaid overpayments for AstraZeneca's product Zoladex,¹ among other drugs, "from 1992 to the present"² as a result of defendants' fraudulent and misleading schemes that overcharge the New York State Medicaid Program [] for prescription drugs bought on behalf of City and County residents who receive Medicaid benefits." (emphasis added). CC ¶1; NSAC ¶1. Paragraph 3 of the 2003 Settlement Agreement explicitly states:

Notwithstanding any term of this Agreement, the state of New York **specifically does not herein release** any person or entity, **including Zeneca**, its predecessors, successors, subsidiaries, partners, joint venture owners, and their corporate parents and affiliates, predecessors, successors and assigns, and their current

¹See CC ¶ 246; CC Exh. A; NSAC ¶ 235; NSAC Exh. B.

²Tellingly, AstraZeneca quotes the exact same language in its individual memorandum, however, AstraZeneca purposefully misleads the Court by extracting the emphasized phrase "from 1992 to the present" and inserting "...". See AstraZeneca Defendants' Individual Memorandum of Law at 2.

and former directors, officers, and employees from any and all of the following:

....
(j) any reporting of AWP for Zoladex to First Data Bank or any other national reporting service for use in Medicaid reimbursement submitted **subsequent to the effective date of this Agreement** [December 3, 2003]

(emphasis added).

The NY Counties have adequately pled claims against AstraZeneca for damages resulting from the payment of Medicaid reimbursements based on the falsely reported AWP of Zoladex since December 3, 2003. *See* CC ¶¶ 38, 246-270; NSAC ¶¶ 235 - 257.

CONCLUSION

For the reasons set forth herein, only claims relating to Zoladex against AstraZeneca prior to December 3, 2003 should be dismissed.

Dated: April 17, 2006

Respectfully submitted,

**City of New York and all captioned Counties
except Nassau, by**

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